

104TH CONGRESS
1ST SESSION

H. R. 1717

To establish minimum standards of fair conduct in franchise sales and franchise business relationships, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 25, 1995

Mr. LAFALCE introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To establish minimum standards of fair conduct in franchise sales and franchise business relationships, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Federal Fair Franchise Practices Act”.

6 (b) TABLE OF CONTENTS.—

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purpose.
- Sec. 3. Franchise sales practices.
- Sec. 4. Unfair franchise practices.
- Sec. 5. Standards of conduct.
- Sec. 6. Franchisee associations.
- Sec. 7. Acquisition of franchise systems.

Sec. 8. Franchisor encroachment.
Sec. 9. Procedural fairness.
Sec. 10. Actions by private persons.
Sec. 11. Actions by state attorneys general.
Sec. 12. Effect on other law.
Sec. 13. Census data on franchise businesses.
Sec. 14. Scope and applicability.
Sec. 15. Definitions.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress makes the following
3 findings:

4 (1) Franchise business relationships represent a
5 large and growing segment of the nation's retail and
6 service businesses and are rapidly replacing more
7 traditional forms of small business ownership in the
8 American economy.

9 (2) Franchise relationships involve a joint en-
10 terprise between the franchisor and franchisees in
11 which each party has a vested interest in the fran-
12 chised business.

13 (3) Most prospective franchisees lack bargain-
14 ing power and generally invest substantial amounts
15 to obtain a franchise business when they are unfa-
16 miliar with operating a business, with the business
17 being franchised and with industry practices in fran-
18 chising.

19 (4) Many franchises reflect a profound imbal-
20 ance of contractual power in favor of the franchisor,
21 and fail to give due regard to the legitimate business

1 interests of the franchisee, as a result of the
2 franchisor reserving pervasive contractual rights over
3 the franchise relationship.

4 (5) Franchisees may suffer substantial financial
5 losses when the franchisor does not provide truthful
6 or complete information regarding the franchise op-
7 portunity, or where the franchisor does not act in
8 good faith or with due care in the performance of
9 the franchise contract.

10 (6) Traditional common law doctrines have not
11 evolved sufficiently to protect franchisees adequately
12 from fraudulent or unfair practices in the sale and
13 operation of franchise businesses, and significant
14 contractual and procedural restrictions have denied
15 franchisees viable legal recourse to protect their in-
16 terests in such businesses.

17 (b) PURPOSE.—It is the purpose of this Act to pro-
18 mote greater fairness and equity in franchise relation-
19 ships, to protect prospective franchises from fraudulent
20 sales practices, to establish minimum standards of conduct
21 in franchise practices, to strengthen private remedies
22 against fraudulent or unlawful actions, to provide the pub-
23 lic with more reliable information regarding franchising,
24 and to provide to consumers the greater benefits which
25 would flow from more equitable franchise relationships.

1 **SEC. 3. FRANCHISE SALES PRACTICES.**

2 (a) IN GENERAL.—In connection with the advertis-
3 ing, offering, licensing, contracting, sale or other pro-
4 motion in or affecting commerce of any franchise, or any
5 relationship which is represented either orally or in writing
6 to be a franchise, it shall be unlawful for any person, part-
7 nership or corporation—

8 (1) to employ a device, scheme, or artifice to
9 defraud;

10 (2) to engage in an act, practice, course of busi-
11 ness or pattern of conduct which operates or is in-
12 tended to operate as a fraud or deceit upon any per-
13 son;

14 (3) to obtain money or property, or assist oth-
15 ers to obtain money or property, by means of any
16 untrue statement of a material fact, any omission to
17 state a material fact, or any omission to state a ma-
18 terial fact necessary in order to make the statements
19 made, in the light of the circumstances under which
20 they are made, not misleading; or

21 (4) to discriminate among prospective
22 franchisees on the basis of race, sex, religion, dis-
23 ability or national origin—

24 (A) in the solicitation, offering or sale of
25 any franchise opportunity, except that, and
26 then only to the extent that, any discrimination

1 between franchisees is reasonable and is related
2 to a program under which franchises are made
3 available to a class of persons who may have
4 been denied franchise opportunities in the past
5 based on suspect classifications including race,
6 sex, religion, disability or national origin; or

7 (B) in the selection of any site or location
8 for a franchise business; or

9 (5) to represent or imply in any manner what-
10 soever that a franchise has been reviewed, endorsed,
11 recommended or approved by the United States or
12 any agency or officer thereof.

13 (b) MISREPRESENTATIONS IN REQUIRED DISCLO-
14 SURE.—

15 (1) In connection with any disclosure document,
16 notice or report required by law or regulation, it
17 shall be unlawful for any franchisor, subfranchisor
18 or franchise broker, either directly or indirectly
19 through any officer, employee, agent, representative
20 or attorney—

21 (A) to make or cause to be made an un-
22 true statement of material fact, omit to state a
23 material fact, or omit to state a material fact
24 necessary in order to make the statements

1 made, in the light of the circumstances under
2 which they are made, not misleading;

3 (B) to fail to furnish any prospective
4 franchisee with all information required to be
5 disclosed and at the time and in the manner re-
6 quired; and

7 (C) to make any claim or representation to
8 a prospective franchisee, whether orally or in
9 writing, which is inconsistent with or con-
10 tradicts any information provided to the pro-
11 spective franchisee in any required disclosure.

12 (2) For purposes of this subsection, the term
13 disclosure document means either the disclosure
14 statement required by the Federal Trade Commis-
15 sion in Trade Regulation Rule 436 (16 CFR 436)
16 as it may be amended, or an offering circular pre-
17 pared in accordance with Uniform Franchise Offer-
18 ing Circular guidelines as adopted and amended by
19 the North American Securities Administrators Asso-
20 ciation, Inc., or its successor.

21 (c) MISREPRESENTATION OF EARNINGS AND FAIL-
22 URES.—For purposes of this section, an untrue statement
23 of material fact shall include any statement of fact which
24 has the intent or effect of misrepresenting the profitability
25 of a franchise opportunity, the rate of success of fran-

1 chises or franchisees associated with a franchise oppor-
2 tunity, or the rate of success of franchises generally.

3 (d) BURDEN OF PROOF.—For purposes of this sec-
4 tion, the burden of proof shall be on the franchisor to show
5 that any claim, statement or representation, either made
6 orally or in writing as part of an advertisement, sales pres-
7 entation, marketing document or required disclosure in
8 connection with the offering or sale of a franchise, is accu-
9 rate and not misleading, and that such claim, statement
10 or representation had a reasonable basis in fact at the
11 time it was made.

12 (e) EFFECTIVE DATE.—The requirements of this sec-
13 tion shall take effect sixty days after the date of enactment
14 of this Act and shall apply only to actions, practices, dis-
15 closures and statements occurring on or after such date.

16 **SEC. 4. UNFAIR FRANCHISE PRACTICES.**

17 (a) DECEPTIVE AND DISCRIMINATORY PRACTICES.—
18 In connection with the operation of a franchise system or
19 the performance, enforcement, renewal and termination of
20 any franchise agreement, or of an agreement for any rela-
21 tionship which is represented either orally or in writing
22 to be a franchise, it shall be unlawful for a franchisor or
23 subfranchisor, either directly or indirectly through any of-
24 ficer, employee, agent, representative or attorney—

1 (1) to engage in an act, practice, course of busi-
2 ness, or pattern of conduct which operates or is in-
3 tended to operate as a fraud or deceit upon any per-
4 son;

5 (2) to employ unlawful or deceptive acts or
6 practices in the operation of the franchisor's enter-
7 prise or method of business; or

8 (3) to discriminate among franchisees on the
9 basis of race, sex, religion, disability or national ori-
10 gin.

11 (b) TERMINATION WITHOUT GOOD CAUSE.—

12 (1) It shall be unlawful for a franchisor or
13 subfranchisor, either directly or indirectly through
14 any officer, employee, agent or attorney, to termi-
15 nate or otherwise cancel a franchise prior to its expi-
16 ration without good cause for such termination or
17 cancellation.

18 (2) For purposes of this subsection, good cause
19 shall exist only where—

20 (A) the franchisee fails to comply with a
21 material provision of the franchise agreement
22 after notice specifying the default and a thirty-
23 day period to cure the default, or if the default
24 can not be cured within thirty days, the
25 franchisee fails to initiate within thirty days

1 and diligently pursue substantial continuing ac-
2 tion to cure the default;

3 (B) the franchisee, without the require-
4 ment of notice and opportunity to cure—

5 (i) voluntarily abandons the franchise
6 business, except that loss or termination of
7 a leasehold for the franchise business prior
8 to the term of a franchise agreement by
9 reason of eminent domain, foreclosure sale,
10 natural disaster or other termination not
11 the fault of the franchisee shall not be con-
12 sidered abandonment by the franchisee;

13 (ii) is convicted of a crime that sub-
14 stantially impairs the good will associated
15 with the franchisor's trade mark, service
16 mark, trade name, logotype, advertising or
17 other commercial symbol;

18 (iii) repeatedly fails to comply with
19 the same material provision of the fran-
20 chise agreement, where the enforcement of
21 such provision is substantially similar to
22 enforcement of that provision with other
23 franchisees; or

1 (iv) operates the franchised business
2 in a manner that creates an imminent dan-
3 ger to public health or safety; and

4 (C) the franchisor, whether or not as a re-
5 sult of bankruptcy or reorganization, withdraws
6 from a marketing area, provided the franchisor
7 pays the franchisee reasonable compensation for
8 damages incurred from the shortened term of
9 the franchise, or agrees not to enforce any con-
10 tractual prohibition against the franchisee con-
11 tinuing to engage in the business at the licensed
12 location, except as provided in subsection (d)(3)
13 of this section.

14 (d) MANDATORY SOURCING OF SUPPLIES.—

15 (1) It shall be unlawful for any franchisor or
16 subfranchisor, either directly or indirectly through
17 any officer, employee, agent, representative or attor-
18 ney, to prohibit a franchisee from obtaining equip-
19 ment, fixtures, supplies or services used in the estab-
20 lishment or operation of the franchised business
21 from sources of the franchisee's choosing, except
22 that such goods or services may be required to meet
23 uniform system-wide quality standards which are not
24 arbitrarily promulgated or enforced by the
25 franchisor.

1 (2) This subsection shall not apply to reason-
2 able quantities of inventory of goods or services (in-
3 cluding display and sample items) that the
4 franchisee is required to obtain from the franchisor
5 and/or its affiliate(s), where such goods or services
6 are integrally related to a trademark, trade name,
7 trade secret or patent owned by or licensed to the
8 franchisor or its affiliate(s), provided the franchisor
9 shall not withhold a franchisee's right to obtain such
10 goods and services without providing a notice of de-
11 fault and a thirty-day period to cure the default.

12 (e) POST-TERM RESTRICTIONS ON COMPETITION.—

13 (1) A franchisor shall not, either directly or in-
14 directly through any officer, employee, agent, rep-
15 resentative or attorney, prohibit, or enforce a prohi-
16 bition against, any franchisee from engaging in any
17 business at any location after expiration of a fran-
18 chise or after termination of the franchise prior to
19 its expiration for good cause.

20 (2) This subsection shall not apply to enforce-
21 ment of any such prohibition where the franchisor,
22 not less than ten days before the effective date of
23 such termination or expiration, offers in writing to
24 purchase the assets of the franchised business for its

1 fair market value as a going concern, provided
2 that—

3 (A) the fair market value of such business
4 be determined as if it were to be resold or re-
5 newed for a period of years equal to the con-
6 tract term being offered by the franchisor for
7 new or renewed franchises;

8 (B) the fair market value of such business
9 is ascertained by an impartial appraiser, whose
10 appointment is acceptable to both parties; and

11 (C) any forgiveness of debt shall not be
12 considered a purchase of assets by the
13 franchisor for purposes of this section; and

14 (3) Nothing in this subsection shall be inter-
15 preted to prohibit enforcement of any provisions of
16 a franchise contract obligating a franchisee after ex-
17 piration or termination of a franchise—

18 (A) to cease or refrain from using a trade-
19 mark, trade secret or other intellectual property
20 owned by the franchisor or its affiliate, except
21 that the existence of language in the franchise
22 agreement purporting to determine ownership
23 of a trademark, trade secret or other intellec-
24 tual property shall not be binding upon any
25 court or forum for purposes of this paragraph,

1 but may be considered by such court or forum
2 as evidence of such ownership; or

3 (B) to alter the appearance of the premises
4 and the manner of operation of the franchised
5 business to avoid any likelihood of confusion as
6 to the affiliation of the business with its former
7 franchisor.

8 **SEC. 5. STANDARDS OF CONDUCT.**

9 (a) DUTY OF GOOD FAITH.—

10 (1) A franchise contract imposes on each party
11 thereto a duty to act in good faith in its perform-
12 ance and enforcement.

13 (2) As used in this subsection, a duty of good
14 faith shall obligate a party to a franchise to do noth-
15 ing that will have the effect of destroying or injuring
16 the right of the other party to receive the fruits of
17 the contract and to do everything required under the
18 contract to accomplish such purpose.

19 (b) DUTY OF DUE CARE.—

20 (1) A franchise relationship imposes on the
21 franchisor a duty of due care. Unless a franchisor
22 represents that it has greater skill or knowledge in
23 its undertaking with its franchisees, or conspicuously
24 disclaims that it has skill or knowledge, the
25 franchisor is required to exercise the skill and knowl-

1 edge normally possessed by franchisors in good
2 standing in the same or similar types of business.

3 (2) For purposes of this subsection—

4 (A) the phrase “skill or knowledge” means
5 something more than the mere minimum level
6 of skill or knowledge required of any person en-
7 gaging in a service or business and involves a
8 special level of expertise—

9 (i) which is the result of acquired
10 learning and aptitude developed by special
11 training and experience in the business to
12 be conducted under the franchise, or the
13 result of extensive use and experience with
14 the products or services or the operating
15 system of the franchise;

16 (ii) which is the result of experience in
17 organizing a franchise system and in pro-
18 viding training, assistance and services to
19 franchisees; and

20 (iii) which a prospective franchisee
21 would expect in reasonable reliance on the
22 written and oral commitments and rep-
23 resentations of the franchisor; and

24 (B) a franchisor shall be permitted to show
25 that it contracted for, hired or purchased the

1 expertise necessary to comply with the require-
2 ments of this subsection and that such expertise
3 was incorporated in the franchise or commu-
4 nicated or provided to the franchisee.

5 (3) The requirement of this subsection may not
6 be waived by agreement or by conduct, but the
7 franchisor may limit in writing the nature and scope
8 of its skill and knowledge, and of its undertaking
9 with a prospective franchisee, provided that no in-
10 consistent representation, whether written or oral, is
11 made to the prospective franchisee.

12 (c) LIMITED FIDUCIARY DUTY.—

13 (1) Without regard to whether a fiduciary duty
14 is imposed generally on the franchisor by virtue of
15 a franchise relationship, the franchisor owes a fidu-
16 ciary duty to its franchisees and is obligated to exer-
17 cise the highest standard of care for franchisee in-
18 terests where the franchisor—

19 (A) undertakes to perform bookkeeping,
20 collection, payroll or accounting services on be-
21 half of the franchisee; or

22 (B) requires franchisees to make contribu-
23 tions to any pooled advertising or promotional
24 fund to be administered or supervised by the
25 franchisor.

(a) RIGHT OF ASSOCIATION.—It shall be unlawful for any franchisor or subfranchisor, either directly or indirectly through any officer, employee, agent representative or attorney—

(1) to hinder or prohibit, directly or indirectly,
the free association of franchisees for any lawful
purpose, including the formation of or participation
in any trade association made up of franchisees; and

(2) to discriminate against a franchisee by imposing requirements not imposed on other similarly situated franchisees or otherwise retaliate, directly or indirectly, against any franchisee for membership or participation in a franchisee association.

(b) ANTITRUST EXEMPTION.—The Clayton Antitrust Act (15 U.S.C. 12 et seq.) is amended by adding after section 27, the following new section:

23 “ANTITRUST LAWS NOT APPLICABLE TO FRANCHISEE
24 ASSOCIATIONS

25 “SEC. 28. Nothing contained in the antitrust laws
26 shall be construed to prohibit the existence and operation

1 of associations of owners of franchise businesses, insti-
2 tuted for the purposes of mutual help, and not having cap-
3 ital stock or conducted for profit, or to prohibit or restrain
4 individual members of such associations from lawfully car-
5 rying out the legitimate objects thereof; nor shall such as-
6 sociations, or the members thereof, be held or construed
7 to be illegal combinations or conspiracies in restraint of
8 trade, under the antitrust laws.”.

9 **SEC. 7. ACQUISITION OF FRANCHISE SYSTEMS.**

10 (a) IN GENERAL.—Whenever all or a major portion
11 of the franchise system is acquired by another person
12 through purchase, merger, consolidation, acquisition of as-
13 sets or through the bankruptcy court, any foreclosure or
14 judicial order, or otherwise, the person acquiring the fran-
15 chise system shall assume the obligations agreed to by the
16 predecessor franchisor in contracts with franchisees and
17 the franchisees shall be entitled to hold such transferee
18 legally responsible for the duties and responsibilities of the
19 predecessor franchisor.

20 (b) MUTUAL RELEASE OF OBLIGATIONS.—Unless
21 the person acquiring a franchise system expressly under-
22 takes such obligations, or acts in good faith to renegotiate
23 such obligations with franchisees, the franchisees shall be
24 entitled to reject their contractual duties and responsibil-
25 ities to the franchisor, including any noncompetition cov-

1 enant and post-term obligations, provided that upon such
2 rejection, the franchisees cease from using the franchisor's
3 trademarks, logos and other express identification, and
4 otherwise alter the appearance of the premises and the
5 manner of operation of the franchise business to avoid any
6 likelihood of confusion as to the affiliation of the business
7 with the franchise system.

8 **SEC. 8. FRANCHISOR ENCROACHMENT.**

9 (a) IN GENERAL.—A franchisor shall not grant or
10 license a new franchise, or otherwise establish a new outlet
11 or one or more points of sale of goods or services similar
12 to that offered by a franchisee and identified by the same
13 trade name, trademark, logotype, commercial system or
14 advertising used by a franchisee in unreasonable proximity
15 to an outlet or business owned or licensed to such
16 franchisee so that the effect or probable effect of granting
17 or establishing such new franchise, outlet or point(s) of
18 sale is to cause a reduction in gross sales of the existing
19 franchise.

20 (b) LIABILITY FOR MONETARY DAMAGES.—Where a
21 franchisor has granted a new franchise or established a
22 new outlet or point of sale in such unreasonable proximity
23 to an existing franchise, the owner of the existing fran-
24 chise shall have cause of action for monetary damages,
25 including, but not limited to, actual loss of income result-

1 ing from the reduction in gross sales caused by the open-
2 ing and operation of the new franchise, outlet or point of
3 sale, anticipated loss of income caused by the continued
4 operation of such franchise, outlet or point of sale and
5 costs of litigation and reasonable attorney's fees.

6 (c) EXCEPTIONS FROM LIABILITY.—This section
7 shall not apply where—

8 (1) the reduction in gross sales for an existing
9 franchise caused by the opening and operation of the
10 new franchise, outlet or one or more points of sale,
11 based on a comparison to annual gross sales from
12 the same franchise location during the twelve-month
13 period immediately preceding the opening of the new
14 franchise, outlet or point(s) of sale, is determined to
15 have been less than 5 percent during the first twelve
16 months following the opening of such new franchise,
17 outlet or points of sale;

18 (2) the franchisor, prior to offering the new
19 franchise to another owner, has provided the existing
20 franchisee a right of first refusal for the new fran-
21 chise location on, at least, the same terms and con-
22 ditions available to the other potential franchisee, or,
23 if the new location is an outlet to be owned by the
24 franchisor, or one or more points of sale to be owned
25 or controlled by the franchisor, the existing

1 franchisee is provided a right of first refusal on the
2 terms and conditions that would ordinarily be of-
3 fered to a franchisee or other licensee for similarly
4 situated outlet, location or point of sale;

5 (3) the franchisor does not offer a right of first
6 refusal, but agrees to compensate the existing
7 franchisee or franchisees for market sales diverted
8 by the opening of a new franchise, outlet or points
9 of sale, provided that the franchisor and franchisee
10 agree upon the proper amount of such compensation
11 to be provided, or, if the franchisor and franchisee
12 cannot agree to the proper amount of such com-
13 pensation—

14 (A) each party shall appoint an independ-
15 ent appraiser to determine the amount of such
16 compensation;

17 (B) if the independent appraisers are un-
18 able to agree on the appropriate amount of
19 such compensation, the independent appraisers
20 shall appoint a third appraiser to determine the
21 level of compensation; and

22 (C) the determination of the independent
23 appraiser shall be final and binding; and

1 (4) the franchisor, prior to granting or licensing
2 a new franchise or opening a new outlet or one or
3 more points of sale—

4 (A) provides reasonable notice to all
5 franchisees in proximity of the proposed fran-
6 chise, outlet or point of sale to determine if a
7 franchisee objects to the proposed franchise,
8 outlet or point of sale as having an adverse im-
9 pact on sales of an existing franchise; and

10 (B) agrees that, upon receiving an objec-
11 tion in writing from an existing franchisee, the
12 matter will be submitted for resolution by an
13 impartial arbitrator, provided—

14 (i) the selection of an arbitrator and
15 the time and location of any arbitration
16 proceeding are determined by agreement of
17 the parties or their counsel;

18 (ii) the burden of proof is on the
19 franchisor to show that the market area of
20 the proposed franchise, outlet or point of
21 sale is not being served by any existing
22 franchise and that the proposed franchise,
23 outlet or point of sale will not unduly re-
24 duce sales of existing franchises; and

1 (iii) the decision of the arbitrator shall
2 be binding, to the effect that if the arbitra-
3 tor rules against the franchisor, the pro-
4 posed franchise, outlet or point of sale can-
5 not be granted or opened.

6 (d) BURDEN OF PROOF.—With regard to any civil
7 action brought under subsection (a)—

8 (1) the franchisee shall have the burden of
9 proof to document the amount of any reduction in
10 gross sales and income resulting from the opening
11 and operation in unreasonable proximity to an exist-
12 ing franchise of the new franchise, outlet or point of
13 sale; and

14 (2) the franchisor shall have the burden of
15 proof to show that, or the extent to which, a decline
16 in sales of an existing franchise or franchises oc-
17 curred for reason other than the opening and oper-
18 ation in unreasonable proximity to the existing fran-
19 chise of the new franchise, outlet or point of sale.

20 (e) FILING LIMITATION.—Notwithstanding the provi-
21 sions of section 10(a)(2) of this Act, any civil action
22 brought under this section shall be filed within eighteen
23 months following the opening and operation of the new
24 franchise, outlet or point of sale.

1 **SEC. 9. PROCEDURAL FAIRNESS.**

2 (a) It shall be unlawful for any franchisor or
3 subfranchisor, either directly or indirectly through any of-
4 ficer, employee, agent, representative or attorney to—

5 (1) require any term or condition in a franchise
6 agreement, or in any agreement ancillary or collat-
7 eral to a franchise, which directly or indirectly vio-
8 lates any provision of this Act;

9 (2) require a franchisee to assent to any dis-
10 claimer, waiver, release, stipulation or other provi-
11 sion which would purport—

12 (A) to relieve any person from a duty im-
13 posed by this Act, except as part of a settle-
14 ment of an bona fide dispute; or

15 (B) to protect any person against any li-
16 ability to which he would otherwise be subject
17 under the Act by reason of willful misfeasance,
18 bad faith, or gross negligence in the perform-
19 ance of duties, or by reason of reckless dis-
20 regard of obligations and duties under the fran-
21 chise agreement; or

22 (3) require a franchisee to assent to any waiver,
23 release, stipulation or other provision, either as part
24 of any agreement or document relating to the oper-
25 ation of a franchise business, in any agreement or
26 document relating to the termination, cancellation,

1 forfeiture, repurchase or resale of a franchise busi-
2 ness or as a condition for permitting a franchisee to
3 leave the franchise system, which would purport to
4 prevent the franchisee from making any oral or writ-
5 ten statement relating to the franchise business, to
6 the operation of the franchise system or to the
7 franchisee's experience with the franchise business;
8 except that, and only to the extent that, such waiver
9 or release is required as part of the settlement of a
10 bona fide dispute and relates only to the terms of
11 such settlement and to the negotiation of such set-
12 tlement.

13 (b) Any condition, stipulation, provision, or term of
14 any franchise agreement, or any agreement ancillary or
15 collateral to a franchise, which would purport to waive or
16 restrict any right granted under this Act shall be void and
17 unenforceable.

18 (c) No stipulation or provision of a franchise agree-
19 ment or of an agreement ancillary or collateral to a fran-
20 chise shall—

21 (1) deprive a franchisee of the application and
22 benefits of this Act or of any Federal law or the law
23 of the State in which the franchisee's principal place
24 of business is located;

1 (2) deprive a franchisee of the right to com-
2 mence an action (or, if the franchise provides for ar-
3 bitration, initiate an arbitration) against the
4 franchisor for violation of the Act, or for breach of
5 the franchise agreement or of any agreement or stip-
6 ulation ancillary or collateral to the franchise, in a
7 court (or arbitration forum) in the state of the
8 franchisee's principal place of business; or

9 (3) exclude collective action by franchisees to
10 settle like disputes arising from violation of this Act
11 either by civil action or arbitration.

12 (d) Compliance with this Act or with an applicable
13 State franchise law is not waived, excused or avoided, and
14 evidence of violation of this Act or of such State law shall
15 not be excluded, by virtue of an integration clause, any
16 provision of a franchise agreement or an agreement ancil-
17 lary or collateral to a franchise, the parol evidence rule,
18 or any other rule of evidence purporting to exclude consid-
19 eration of matters outside the franchise agreement.

20 **SEC. 10. ACTIONS BY PRIVATE PERSONS.**

21 (a)(1) Any person injured by a violation of any provi-
22 sion or standard of this Act shall have a right of action
23 for all damages caused by the violation, including costs
24 of litigation and reasonable attorney's fees, against any
25 person found to be liable for such violation.

1 (2) An action may be brought, without regard to the
2 amount in controversy, in any United States district court,
3 in any State court, or in any other court of competent
4 jurisdiction, before the later of:

5 (A) Five years after the date on which the vio-
6 lation occurred.

7 (B) Three years after the date on which the
8 violation was discovered or should have been discov-
9 ered through exercise of reasonable diligence.

10 (b) Any person injured by a violation of this Act, or
11 threatened with injury by an impending violation of this
12 Act, may bring an action in a United States district court,
13 in any State court or in any other court of competent ju-
14 risdiction to obtain a declaratory judgment that an act or
15 conduct constitutes or would constitute a violation of this
16 Act and to enjoin a person who has violated, is violating,
17 or who is otherwise likely to violate any provision of this
18 Act. In such actions, the court may issue a temporary re-
19 straining order or preliminary injunction to protect the
20 public interest by halting a recurring or likely violation
21 of this Act, prior to a final determination on the merits,
22 in conformity with the principles governing the granting
23 of preliminary relief in other civil actions, except that no
24 showing of special or irreparable damage to such person
25 shall have to be made.

1 (c)(1) In any action brought under subsections (a)
2 or (b) of this section, a court shall have the power to inter-
3 pret any benefit conferred, duty imposed, or restriction ap-
4 plied in favor of or against any party to a franchise agree-
5 ment as reciprocal and equally applicable to the other
6 party to the agreement and to provide an identical or simi-
7 lar benefit, impose an identical or similar duty, or apply
8 an identical or similar restriction on such other party to
9 the agreement, provided that such reciprocal application
10 is consistent with the laws of the State in which the fran-
11 chise business is located.

12 (2) A court shall apply any provision contained in a
13 franchise agreement which purports to restrict the ability
14 of one party to compete with the other party during the
15 term of the franchise agreement reciprocally to the extent
16 deemed fair and appropriate.

17 (d)(1) Except as otherwise provided in paragraph (2)
18 of this subsection, nothing contained in this Act shall limit
19 the right of a franchisor and a franchisee to agree to arbi-
20 tration, mediation or other nonjudicial resolution of a dis-
21 pute, either in advance or after a dispute arises, provided
22 that the standards and protections applied in any binding
23 nonjudicial procedure agreed to by the parties are not less
24 than the requirements set forth in this Act.

1 (2) Any stipulation or provision of a franchise agree-
2 ment requiring use of arbitration or other nonjudicial res-
3 olution to resolve disputes arising under the agreement
4 shall not apply to bar an action brought in a United States
5 district court or in any other court of competent jurisdic-
6 tion pursuant to this section involving a request for dam-
7 ages and/or equitable relief for an alleged violation of any
8 provision of this Act, except where such request is frivo-
9 lous or insubstantial. A determination of whether a re-
10 quest for damages and/or equitable relief is frivolous or
11 insubstantial shall be made by the court in which the ac-
12 tion is filed at any hearing at which all parties are present
13 or represented by counsel.

14 (e) The private rights provided in this section are in
15 addition to, and no in lieu of other rights or remedies cre-
16 ated by Federal or State law or regulation.

17 **SEC. 11. ACTIONS BY STATE ATTORNEYS GENERAL.**

18 (a) Whenever an attorney general of any State has
19 reason to believe that the interests of the residents of that
20 State have been or are being threatened or adversely af-
21 fected because any person has engaged or is engaging in
22 a pattern or practice which violates any provision of this
23 Act, the State, as *parens patriae*, may bring a civil action
24 on behalf of its residents in an appropriate district court
25 of the United States to enjoin such violations, to obtain

1 damages, restitution, or other compensation on behalf of
2 residents of such State or to obtain such further and other
3 relief as the court may deem appropriate.

4 (b) For purposes of bringing any civil action under
5 subsection (a), nothing in this Act shall prevent an attor-
6 ney general from exercising the powers conferred on the
7 attorney general by the laws of such State to conduct in-
8 vestigations or to administer oaths or affirmations or to
9 compel the attendance of witnesses or the production of
10 documentary and other evidence.

11 (c) Any civil action brought under subsection (a) in
12 a district court of the United States may be brought in
13 the district in which the defendant is found, is an inhab-
14 itant, or transacts business or wherever venue is proper
15 under section 1391 of title 28, United States Code. Proc-
16 ess in such action may be served in any district in which
17 the defendant is an inhabitant or in which the defendant
18 may be found.

19 (d) Nothing contained in this section shall prohibit
20 an authorized State official from proceeding in State court
21 on the basis of an alleged violation of any civil or criminal
22 statute of such State.

23 **SEC. 12. EFFECT ON OTHER LAW.**

24 (a) This Act preempts State law only to the extent
25 that State law is inconsistent with any provision of this

1 Act, in terms of providing less protection to the franchisee
2 than provided by this Act, and then only to the extent
3 of such inconsistency.

4 (b) Nothing in this Act shall be interpreted—

5 (1) to alter or relieve any franchisor or
6 subfranchisor from the obligation to comply with the
7 laws of any State, except to the extent that such
8 laws are inconsistent with any provision of this Act;
9 or

10 (2) to preclude a State from enacting any law
11 or regulation that affords a greater level or broader
12 range of protections to franchisees.

13 **SEC. 13. CENSUS DATA ON FRANCHISE BUSINESSES.**

14 (a) The Bureau of the Census of the Department of
15 Commerce (hereafter, the “Bureau of the Census”) shall
16 include in its Business Census for 1997, and in each such
17 succeeding census, statistical information on the number,
18 ownership and operation of franchise businesses.

19 (b) The Bureau of the Census shall—

20 (1) consult with the Federal Trade Commission
21 to establish criteria and procedures to identify fran-
22 chise businesses to be included in the Business Cen-
23 sus; and

24 (2) consult with the Congress, the Federal
25 Trade Commission and other interested organiza-

1 tions in establishing categories of statistical informa-
2 tion to be collected in the Business Census relating
3 to the number, ownership and operation of franchise
4 businesses.

5 (c) Not later than two hundred eighty days after the
6 date of enactment of this section, the Bureau of the Cen-
7 sus shall submit a report to the Congress which shall de-
8 scribe the most cost effective and accurate means to gath-
9 er and present the statistical information required to be
10 collected pursuant to this section and identify the cat-
11 egories of data relating to franchise businesses to be in-
12 cluded in the Business Census.

13 **SEC. 14. SCOPE AND APPLICABILITY.**

14 Except as otherwise provided, the requirements of
15 this Act shall apply to franchise agreements entered into,
16 amended, exchanged or renewed after the date of enact-
17 ment of this Act.

18 **SEC. 15. DEFINITIONS.**

19 For purposes of this Act:

20 (1) The term “advertisement” means a commu-
21 nication circulated generally by mail, or print media
22 or electronic media, or otherwise disseminated gen-
23 erally to the public, in connection with an offer or
24 sale of a franchise.

1 (2) The term “affiliate” means a natural or
2 legal person controlling, controlled by, or under com-
3 mon control with franchisor.

4 (3) The term “franchise” means—

5 (A) any continuing commercial relationship
6 created by a contract or agreement, either ex-
7 pressed or implied, whether oral or written,
8 where—

9 (i) one person (the franchisor) grants
10 to another person (the franchisee) the
11 right to engage in the business of offering,
12 selling or distributing goods or services, in
13 which—

14 (I) the goods and services of-
15 fered, sold or distributed by the
16 franchisee are substantially associated
17 with the trademark, service mark,
18 trade name, logotype, advertising, or
19 other commercial symbol owned or
20 used by the franchisor (hereafter “the
21 franchisor’s mark”); or

22 (II) the franchisee must conform
23 to quality standards established by
24 the franchisor with respect to the
25 goods and services being distributed,

1 and operate under a name that in-
2 cludes, in whole or in part, the
3 franchisor's mark;

4 (ii) the franchisor—

5 (I) communicates to the
6 franchisee knowledge, experience, ex-
7 pertise, knowhow, trade secrets or
8 other non-patented information, re-
9 gardless of whether it is proprietary
10 or confidential;

11 (II) provides significant assist-
12 ance to the franchisee in areas relat-
13 ing to the franchisee's method of op-
14 eration; or

15 (III) exercises significant controls
16 over the franchisee's method of oper-
17 ation of the business; and

18 (iii) the franchisee, as a condition for
19 obtaining or commencing operation of a
20 franchise, is required to make, or to com-
21 mit to make, payment or other consider-
22 ation to the franchisor, or an affiliate of
23 the franchisor, other than payment for
24 commercially reasonable quantities of

1 goods for resale at a bona fide wholesale
2 price;

3 (B) a subfranchise; or

4 (C) any commercial relationship entered
5 into in reasonable reliance on representations,
6 either oral or written, that the criteria of para-
7 graph (A) of this subsection will be met.

8 (4) The term “franchise broker” means a per-
9 son, other than a franchisor or franchisee, who sells,
10 offers for sale or arranges for the sale of a fran-
11 chise.

12 (5) The term “franchisee” means a person to
13 whom a franchise is granted.

14 (6) The term “franchisor” means a person who
15 grants a franchise or a subfranchise.

16 (7) The term “good faith” means honesty in
17 fact and the observance of reasonable standards of
18 fair dealing in the trade.

19 (8) The terms “material” and “material fact”
20 includes—

21 (A) any fact, circumstance, or set of condi-
22 tions which a reasonable franchisee or a reason-
23 able prospective franchisee would consider im-
24 portant in making a significant decision relat-

1 ing to entering into, remaining in, or abandon-
2 ing a franchise relationship; and

3 (B) any fact, circumstance, or set of condi-
4 tions which has, or may have, any significant fi-
5 nancial impact on a franchisor, franchisee or a
6 prospective franchisee.

7 (9) The term “offer” or “offering” means any
8 effort to offer or to dispose of, or solicitation of an
9 offer to buy, a franchise or interest in a franchise
10 for value.

11 (10) The term “outlet” means a place of busi-
12 ness, temporary or permanent, fixed or mobile, from
13 which products or services are offered for sale.

14 (11) The term “person” means an individual or
15 any other legal or commercial entity.

16 (12) The term “State” means a State, the Dis-
17 trict of Columbia, and any territory or possession of
18 the United States.

19 (13) The term “subfranchise” means a contract
20 or an agreement by which a person pays a
21 franchisor for the right to sell, negotiate the sale, or
22 provide services franchises.

23 (14) The term “subfranchisor” means a person
24 who is granted a subfranchise.

1 (15) The term “trade secret” means informa-
2 tion, including a formula, pattern, compilation, pro-
3 gram, device, method, technique, or process, that—

4 (A) derives independent economic value,
5 actual or potential, from not being generally
6 known to, and not being readily ascertainable
7 by proper means by, other persons who can ob-
8 tain economic value from its disclosure or use,
9 and

10 (B) is the subject of efforts that are rea-
11 sonable under the circumstances to maintain its
12 secrecy.

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